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NASA Procedural Requirements

NPR 1371.1
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COMPLIANCE IS MANDATORY

Requests For Waivers Of The Residence Abroad Requirements For Exchange Visitors Sponsored By NASA Contractors And Grantees w/Change 1 (Revalidated February 24, 2003)

Responsible Office: Export Control & Interagency Liaison Division

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Change History

Chg#	Code/Center	Approved	Description/Comments
1	I	02/21/03	Changes made to make administrative corrections to the following: Responsible office code and title, paragraphs P.1, P.4, P.5, and P.6 of the Preface; 1.1, 1.2, & 1.3 of Chapter 1; 2.1, 2.2, & 2.3 of Chapter 2, 3.1.4.3, 3.1.4.4, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.5, 3.2.6, 3.2.7, 3.3, 3.4, 3.4.1, 3.4.3, 3.4.4, 3.4.5, 3.4.8, 3.4.9, 3.5, 3.6, 3.7, 3.7.1, 3.7.2, 3.7.3, 3.7.4, & 3.8 of Chapter 3.

Preface

P.1 PURPOSE

The purpose of this NPR is to implement the policy set forth in NPD 1371.1, and to ensure that NASA complies with the requirements of the Department of State and U.S. Attorney General for obtaining waivers of the residence abroad requirement.

P.2 APPLICABILITY

This NPR is applicable to NASA Headquarters and NASA Centers, including Component Facilities.

P.3 AUTHORITY

- a. 8 U.S.C. Section 1182(e), Section 212(e) of the Immigration and Nationality Act, as amended.
- b. 42 U.S.C. Section 2473(c)(1), Section 203 (c)(l) of the National Aeronautics and Space Act of 1958, as amended.

P.4 REFERENCES

- a. NASA Policy Directive (NPD) 1371.1.
- b. 22 U.S.C. Section 2452.
- c. 8 CFR Section 212.7(c).
- d. 22 CFR Section 62, Subpart C--Status of Exchange Visitors.

P.5 MEASUREMENTS

The means of measuring adherence with policy shall be the number of waivers actually requested by NASA every year, which shall be recorded by the Office of External Relations. Because the number of waivers sought should be minimized, any significant increase in volume, especially over a period of 2 or more years, should be examined to ensure compliance.

P.5 CANCELLATION

NPR 1371.1, dated November 26, 1997.

/s/ John D. Schumacher
Assistant Administrator for
External Relations

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Chapter 1: Background

1.1. National Policy.

National policy regarding certain foreign nationals in the United States on the J-1 Exchange Visitor Program is to require that they return to their home country for a period of two years upon expiration of their approved exchange program. Requests for waivers to this policy should be considered in light of this policy and, therefore, minimized. However, NASA, as an interested U.S. Government agency, may request a waiver of the 2-year residence abroad requirement on behalf of an alien whose work under a NASA contract, grant, or cooperative agreement has been and would continue to be of significant importance to NASA and the Nation's aeronautics or space program.

1.2. Residence Abroad Requirement.

Under the Mutual Educational and Cultural Exchange Program, the Department of State is authorized to provide for interchanges on a reciprocal basis between the United States and other countries of students, trainees, teachers, guest instructors, professors, and leaders in fields of specialized knowledge or skill (22 U.S.C. Section 2452). An exchange visitor so admitted to the United States (1) whose participation in the U.S. program was financed in whole or part directly or indirectly by a U.S. Government agency or by the government of the country of his or her nationality or his or her last residence, or (2) who, at the time of admission or acquisition of exchange visitor status was a national or resident of a country designated by the Director of the Department of State as clearly requiring the services of persons engaged in a specialized field in which the alien was engaged, is not eligible to apply for a visa as an immigrant or temporary worker, or for an adjustment of status until it is established that the visitor has resided and has been physically present in the country of his or her nationality or his or her last residence, for an aggregate of at least 2 years following departure from the United States. The purpose of this requirement is to ensure that foreign nations, participating in the exchange visitor program, receive at least the initial benefit of the exchange visitor's experiences in the U.S.

1.3. Waivers of the Residence Abroad Requirement.

There are several ways to obtain waivers to the residence abroad requirement. The way addressed in this NPR is a waiver based on a the request of an interested Government agency. The Department of State may also recommend a waiver in an instance where the foreign country of the alien's nationality or last residence has furnished the Secretary of State a statement in writing that it has no objection to such waiver in the case of such alien (8 U.S.C. Section 1182(e)).

Chapter 2: Responsibility

2.1. The Director, Aerospace Technology and Interagency Liaison, Office of External Relations, is responsible for the following:

- 2.1.1. Final review and approval of requests for waiver of the residence abroad requirement; and
- 2.1.2. Rendering advice and making recommendations in connection with waiver requests, as appropriate.

2.2. Center Directors.

Center Directors, in coordination with the Enterprise Associate Administrators/Institutional Program Officers, are responsible for ensuring that only those waiver applications which merit approval are forwarded to the Director, Aerospace Technology and Interagency Liaison.

2.3. Chief Counsel.

Chief Counsel are responsible for ensuring that waiver applications forwarded to the Director, Aerospace Technology and Interagency Liaison are legally sufficient and contain all information necessary for processing.

2.4. Contracting Officers/Grants Officers.

Contracting Officers/Grants Officers or their designees (hereinafter called "Contracting Officer") are responsible for the following:

- 2.4.1. Documenting waiver requests in accordance with applicable procedures where approval is sought, or
- 2.4.2. Informing the requesting party when a request is denied.

Chapter 3: Procedures for Requesting Waivers of the Residence Abroad Requirement for Exchange Visitors Sponsored Contractors or Grantees

3.1 Contracting Officer's Procedure. The Contracting Officer will accomplish the following:

3.1.1 Receive the request.

3.1.2 Make a preliminary determination of whether NASA should seek a waiver on the basis of the criteria listed in paragraph 3.2.

3.1.3 If the preliminary determination is that NASA should not seek a waiver, the Contracting Officer will then --

3.1.3.1 Obtain the review and written concurrence of the Chief Counsel or designee of the Center concerned or, in the case of NASA Headquarters, the General Counsel or designee.

3.1.3.2. Inform the applicant in writing that the request is denied.

3.1.4 If the preliminary determination is that NASA should seek a waiver, the Contracting Office will then --

3.1.4.1 Make written "findings" with respect to each of the criteria listed in paragraph 3.2.

3.1.4.2 Obtain the review and concurrence of the Chief Counsel or designee of the Center concerned or, in the case of NASA Headquarters, the General Counsel or designee.

3.1.4.3 Forward the documented case to the Director, Aerospace Technology and Interagency Liaison, Office of External Relations, NASA Headquarters, with a recommendation that waiver proceedings be initiated.

3.1.4.4 Advise the applicant in writing that the waiver request has been forwarded to NASA Headquarters for further processing.

3.2 Criteria for Approval.

Before a waiver request may be submitted to the Department of State, the following criteria must be satisfied.

3.2.1 The individual's previous employment history, and that person's past and potential relationship to a NASA project as an Exchange Visitor, must be so meritorious as to preclude the possibility that this employment is a device for obtaining NASA's aid in circumventing the residence abroad requirement or otherwise attempting to misuse the Exchange Visitor Program as a channel for immigration or obtaining a temporary worker visa.

3.2.2 NASA must be the Government Agency most directly concerned in the Exchange Visitor's work. While the Exchange Visitor is not required to exhaust all other forms of relief under the immigration laws, NASA will not request a waiver if a simpler, more direct means of relief is available, such as extension of the Exchange Visitor's nonimmigrant J-1 visa or obtaining a waiver based on a no-objection statement from the Exchange Visitors home country or last country of residence.

3.2.3 The NASA-supported project, under which the Exchange Visitor has worked, should have a planned period of performance (based on an actual obligation of funds or assurances from the responsible NASA officer that the project will be extended) for at least 1 year beyond the anticipated effective date of the waiver. When a period of at least 1 year cannot be assured, the alien should attempt to obtain an extension of his/her Exchange Visitor's (nonimmigrant) visa. If this is not possible, (as evidenced by the Exchange Visitor's sponsor having requested an extension from the

Department of State, and such request being denied), the Contracting Officer may then consider a waiver request in the light of the other criteria.

3.2.4 The Exchange Visitor must possess unusual and outstanding qualifications, competence, training, and experience, including a demonstrated capability to make significant contributions in that person's field.

3.2.5 The Exchange Visitor must not have any outstanding financial obligations to a foreign government or to the United States Government which, in the opinion of the Director, Aerospace Technology and Interagency Liaison, must be satisfied as a precondition for obtaining a waiver of the residence abroad requirement.

3.2.6 The contribution of the Exchange Visitor to the NASA project in question must not only be valuable but of such importance that without the Exchange Visitor's services the attainment of the overall objectives, or a major portion thereof, of a contract or grant would be seriously jeopardized or would be unduly delayed; and a request for NASA to seek a waiver as an interested U.S. Government agency should be evaluated in light of the basic purpose of the Exchange Visitor Program.

3.2.7 The project with which the Exchange Visitor is associated must be of such importance that a vital NASA program would be adversely affected by the absence of the Exchange Visitor resulting in the event the project being delayed or discontinued.

3.3 Basis for Requesting Information from the Contractor/Grantee.

The Contracting Officer will instruct the contractor or grantee to supply complete and full information about the Exchange Visitor, as set forth in paragraph 3.4.

3.3.1 In order that the "criteria" in paragraph 3.2 may be applied.

3.3.2 For the further use of the Director, Aerospace Technology and Interagency Liaison in the event that a request for a waiver is made to the Department of State.

3.4 Information to be Provided by the Contractor/Grantee.

Contractors or grantees requesting residence abroad requirement waivers for alien employees deemed essential to NASA-supported work must provide the following information, to the extent applicable, for each affected Exchange Visitor:

3.4.1 Identification of the NASA grants or contracts under which the Exchange Visitor is working.

3.4.2 A one-paragraph description of the overall research objectives of such contract(s) or grant(s).

3.4.3 A one-paragraph description of the specific work the Exchange Visitor is performing under each project, including the percentage of time devoted to the work.

3.4.4 An assessment of the effect on the attainment of the overall project objectives if the Exchange Visitor's services were to become unavailable after a certain specified time and the length of time for which the Exchange Visitor's continued services are required.

3.4.5 The latest date by which the waiver must be granted, evidence and results of attempts to obtain a visa extension, and a statement of any current or planned proceedings relating to a change of visa status.

3.4.6 If the contractor or the grantee requesting the waiver is different from the sponsor of the Exchange Visitor Program to which the alien is assigned, such contractor or grantee must submit a written report, signed by the Responsible Officer of the Exchange Visitor Program sponsor, stating whether or not the sponsor of the program objects to the waiver request. If such sponsor does object, the reasons for the objection should be detailed. This must be done for every sponsor under whose program the alien has been assigned since entry into the United States on an Exchange Visitor visa.

3.4.7 Full details on any financial obligations to either the United States or a foreign government.

3.4.8 Personal information on the Exchange Visitor (and to the extent applicable, the Exchange Visitor's spouse and children), including full name; occupation; present position and title; nationality; place and date of birth; present address and residence; intended residence; place and date of all entries into and exits from the United States; passport (country and number); visa number; city and state of District Director of Immigration Office under which the alien is

placed; alien registration (if applicable) number and authorized period of stay; exchange visitor programs, program numbers, and sponsors; duration of present employment; previous employment in the United States; education and degrees; research experience; professional society memberships; honors; contributions to the state of the art; and publications.

3.4.9 For the Exchange Visitor, and his/her spouse and children, copies of his/her passport (including pages with personal information, photograph, and U.S. visas, entries, and exits), and all IAP-66/DS-2019, or equivalent forms previously executed indicating participation in the Exchange Visitor Program.

3.4.10 Any additional information, not covered herein, on unusual factors or special circumstances pertinent to the request, the Exchange Visitor, or alien's family.

3.5 Written Technical Evaluation.

The Contracting Officer, in reaching a decision on the merits of a waiver request, will obtain a written evaluation of the technical aspects of the material submitted by the applicant from the NASA program or staff office responsible for directing or monitoring the contract(s) or grant(s) under which the Exchange Visitor is or will be supported.

3.6 Spouse and Minor Children.

If a waiver is requested for a married Exchange Visitor, waivers will also be requested for the spouse and minor children, if any, if they are also subject to the residence abroad requirement.

3.7 Review and Approval by the Director, Aerospace Technology and Interagency Liaison.

Upon receipt of a favorable recommendation from the Contracting Officer, the Director, Aerospace Technology and Interagency Liaison will accomplish the following:

3.7.1 Coordinate with the NASA General Counsel to ascertain legal sufficiency;

3.7.2 If the request is from a Center, obtain the review and concurrence of the Headquarters office with institutional authority over the requesting Center, and as applicable, the NASA Enterprise whose program is being supported;

3.7.3 Obtain any further details required prior to submission of a waiver request to the Department of State; and

3.7.4 At his or her option, submit an appropriate request for a waiver to the Department of State.

3.8 Procedural Deviations. Any deviations from these procedures are subject to the approval of the Director, Aerospace Technology and Interagency Liaison.